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November 19, 2018

Bureau of Ocean Energy Management
Office of Renewable Energy Programs
45600 Woodland Road (VAM-OREP)
Sterling, Virginia 20166

Re: Deepwater Wind South Fork, LLC
(Docket ID: BOEM-2018-0010)

Dear Sir or Madam:

Please accept this letter as public comment on the Construction and Operations Plan (COP) submitted by Deepwater Wind South Fork, LLC (“Applicant”) and as a request that the Bureau of Ocean Energy Management (BOEM) reject Wainscott Beach as a possible landing site for the Applicant to access the Buell Lane Substation in East Hampton and to reject the fisheries of the Rhode Island-Massachusetts Wind Energy Area (RI-MA WEA) for the Applicant to produce industrial scale wind-generated electricity.

Please note that the Applicant has not been forthright and upfront with the public regarding the true nature and extent of its plans and many of the Applicant’s representations have been found to lack credibility.

**Comment on the Environmental Impact Statements of Deepwater Wind South Fork, LLC
Proposed Wind Energy Facility Offshore Rhode Island and Massachusetts.**

1. Project-specific Information – 30 CFR 585.626(b)(14)

The Applicant has failed to comply with 30 CFR 585.626(b)(14) which mandates that the Applicant list “all federal, state, and local authorizations, approvals or permits that will be required to conduct the proposed activities, including commercial operations”. The Applicant has failed to list the following two “local authorizations”:

(a) East Hampton Trustees

The Applicant has failed to list the Trustees of the Freeholders and Commonalty of the Town of East Hampton (“East Hampton Trustees”). The Applicant is required to obtain authorization from the East Hampton Trustees before it can bring its proposed 138/230 kilovolt export cable ashore at Wainscott Beach.

The Applicant listed in Table 1.4-1. Summary of Federal, Tribal, State, and Municipal Meetings¹ the East Hampton Trustees nine times and recognizes the authority of the East Hampton Trustees.

The Applicant has been actively negotiating with the East Hampton Trustees for authorization to bring ashore at Wainscott Beach its proposed 138/230 kilovolt export cable, albeit unsuccessfully. At this time, the East Hampton Trustees have not entered into any agreement to grant rights to the Applicant to bring ashore any proposed electricity cable.

The “proprietary interests”² of the East Hampton Trustees are not in doubt. Such “proprietary interests in the lands which will be impacted by the [Applicant’s] Project to be installed within rights-of-way of certain Town-owned roads and beneath the public beach and parking lot at the end of Beach Lane in Wainscott”³ are referred to with specific regard to this application and are recognized, *inter alia*, by the Town of East Hampton.

The Applicant erroneously cites New York State (NYS), Public Service Law (PSL) § 130⁴ which applies only to state agencies, municipalities or any agency thereof. It does not apply to the East Hampton Trustees. The East Hampton Trustees were granted authority through the Dongan Patent of December 9, 1686 and are an autonomous governing body that supersedes the jurisdictional authority of the State of New York.

(b) The Town of East Hampton

The Applicant failed to list necessary easement(s) for it to use property owned by the Town of East Hampton (“Town”) to bring a 138/230 kilovolt cable ashore at Wainscott Beach and bury it underneath local roadways.

Although the Town passed a “Memorializing Resolution in Support of a Grant of Access and Utility Easement”⁵ it has not granted or entered into any such easement with the Applicant. Furthermore, the said resolution applies only where the wind farm is “a 90 megawatt”⁶ wind farm. The resolution would not apply where the Applicant has increased the capacity of its wind farm to 130MW or 180MW as it has sought permission to do in its Construction and Operations Plan.

The Applicant erroneously cites NYS PSL § 130⁷ which applies only from the time when the Applicant filed its application with the NYS Public Service Commission (PSC) until such time as when a Certificate of Environmental Compatibility and Public Need has been granted or denied. If and only when the Applicant has been granted a Certificate of Environmental Compatibility and Public Need, the Applicant can then seek necessary easement(s) from the Town before it can begin construction which it is required to do.

¹ BOEM COP Vol. 1, Paragraph 1.3 Regulatory Framework (pages 1-35 to 42)

² The Town of East Hampton Board Meeting of July 19, 2018, Resolution 2018-888 (at page 53)

³ The Town of East Hampton Board Meeting of July 19, 2018, Resolution 2018-888 (at page 53)

⁴ BOEM COP Vol. 1, Paragraph 1.3 Regulatory Framework (at page 1-29)

⁵ The Town of East Hampton Board Meeting of July 19, 2018, Resolution 2018-888

⁶ The Town of East Hampton Board Meeting of July 19, 2018, Resolution 2018-888 (at page 55)

⁷ BOEM COP Vol. 1, Paragraph 1.3 Regulatory Framework (at page 1-29)

2. Biological Resources – 30 CFR 585.627(a)(3)

In its Construction and Operations Plan (COP), the Applicant seeks permission from BOEM for an export cable of 230 kV⁸. The Applicant seeks permission for duct banks that are “designed to accommodate up to two circuits.”⁹ The Applicant is planning, therefore, to land two submarine cables of 230 kV each with a total capacity of 460 kV at Wainscott Beach.

Despite its four-fold increase in capacity, the Applicant has failed to carry out scientific studies on the effect an electrometric field (EMF) generated by two 230 kV submarine cables may have on species of fish and other aquatic life that are unique to the ocean waters of the Rhode Island-Massachusetts Wind Energy Area (RI-MA WEA). Pursuant to 30 CFR 585.627(a)(3), other aquatic life includes: “Benthic communities, marine mammals, sea turtles, coastal and marine birds, fish and shellfish”.

The possibility of high-voltage alternative current (HVAC) cables deterring aquatic life (especially those species living in the benthic zone) from crossing the EMF to access their breeding grounds has not been thoroughly investigated. The risk that the proposed South Fork Wind Farm will cause irreparable damage to the commercial fisheries is substantial due to the ever-increasing capacity of the cable(s), but also due to the routing of the submarine cable(s). The submarine cable route will run parallel to the southern shoreline of the South Fork then continue from Montauk along the southern boundary of the RI-MA WEA. This cable route may act like an EMF invisible fence stretching unbroken from Wainscott Beach for over 50 miles to the Applicant’s North Lease OCS-A 0486. (*See Appendix I.*)

The Applicant has failed to mitigate the very real risk that certain species of aquatic life may be permanently cut-off from their breeding grounds. This could devastate fisheries.

3. Threatened and Endangered Species – 30 CFR 585.627(a)(4) & (5)

The Applicant has failed to “describe” the natural “resources, conditions, and activities” pursuant to §585.627(a)(4) Threatened and Endangered Species which “could be affected by [its] proposed activities or that could affect the activities proposed in [its] COP”. Specifically, the Applicant has failed to describe properly the natural resources of Wainscott Pond and Georgica Pond and the threatened and endangered species that live within these unique ecosystems.

The wetlands of Wainscott Pond and Georgica Pond are both identified by the Applicant in Appendix G4 of its Construction and Operations Plan.

In Wainscott Pond, for example, a recent report titled Environmental and Human Health Risk Assessment and Remediation at Wainscott Pond published by Prof. Christopher J. Gobler, PhD of the School and Marine and Atmospheric Sciences, Stony Brook University in August 2018, reads as follows:

⁸ BOEM COP Vol. 1, Paragraph 3.2.2 South Fork Export Facilities (at page 3-35)

⁹ BOEM COP Vol. 1, Paragraph 3.2.2.3 South Fork Export Cable - Onshore (at page 3-42)

The Blue-Spotted Salamander Complex (Ambystoma laterale x jeffersonianum), is notable as it has been designated as a Special Concern Species by the New York State Department of Environmental Conservation (NYSDEC). The presence of the Diamond Back Terrapin turtle is also notable as it has recently been designated as a Species of Greatest Conservation Need by NYSDEC. Thus, beyond the inherent beauty of Wainscott Pond, this ecosystem is also home to animals deemed important by NYSDEC for purposes of wildlife conservation.

Neither the Blue-Spotted Salamander nor the Diamond Back Terrapin turtle, which are both classified as *Special Concern Species by the New York State Department of environmental Conservation (NYSDEC)*, were reported by the Applicant in its Construction and Operations Plan.

4. Sensitive Biological Resources or Habitats – 30 CFR 585.627(a)(5)

The Applicant has failed to “describe” the natural “resources, conditions, and activities” pursuant to §585.627(a)(5) Sensitive Biological Resources or Habitats which “could be affected by [its] proposed activities or that could affect the activities proposed in [its] COP”. Specifically, the Applicant has failed to properly describe the essential “fish habitat, refuges, preserves, special management areas identified in coastal management programs, sanctuaries, rookeries, hard bottom habitat, chemosynthetic communities, and calving grounds; barrier islands, beaches, dunes, and wetlands” of Wainscott Pond and Georgica Pond.

The wetlands of Wainscott Pond and Georgica Pond are both identified by the Applicant in Appendix G4 of its Construction and Operations Plan.

5. Social and Economic Recourses – 30 CFR 585.627(a)(7)

(a) Employment

The Applicant has failed to comply with 30 CFR 585.627(a)(7) with specific regard to its potential negative impact upon employment.

The Applicant will charge approximately 22 ¢/kWh¹⁰ for its wind-generated electricity (please see calculation to right).

A similar wind farm, Vineyard Wind, which is just 20 miles from the Applicant’s proposed South Fork Wind Farm, will charge only 6.5 ¢/kWh.¹¹

Nameplate Capacity:	90 MW (megawatts)
Capacity Factor:	47%
Average Actual:	42.2 MW
Given:	1 MW of capacity produces 8,760 MWh per year
Average Actual:	370,000 MWh per year (34.2 MW x 8,760 hours)
Contract Valuation:	\$1,624,738,893 (NYS Comptroller, 20-year term)
Contract Valuation:	\$81,236,945 per year
Price per Output:	\$220 per MWh
Price per Output:	22 cents per kilowatt hour

¹⁰ Over the 20-year term of the Purchase Power Agreement with LIPA in 2017 dollars.

¹¹ Letter to Massachusetts Department of Public Utilities from Department of Energy (August 1, 2018)

At the time Vineyard Wind announced its price of 6.5 ¢/kWh, neither it nor the Applicant had commenced construction. Yet, despite both being on the starting line together, the price of the Applicant's electricity is more than three times the price of that from Vineyard Wind. The Applicant has refused to explain the staggering difference in price.

The Applicant will force ratepayers living on Long Island to pay exorbitantly high electricity prices. This money is money that will not be spent within the local economy. Instead of a family eating at a local restaurant or buying new shoes for their children, this money will go overseas into the pockets of Ørsted, a foreign company that owns Deepwater Wind South Fork, LLC (the Applicant).

There are well over one million ratepayers living on Long Island who will be forced to absorb into their everyday household budgets vastly inflated prices for electricity, more than three times the price in Massachusetts for the same electricity. The Applicant plans to administer a sedative to the Long Island economy in the form of high electricity prices that will steal away what would otherwise be adrenalin driving the local economy forward. The Applicant's proposed wind farm will be a drag on economic growth that will lead to increased unemployment on Long Island.

Furthermore, it will put Long Island at a distinct disadvantage. If the Applicant's plans are approved, Long Island will be burdened with high electricity prices for the next two decades whereas other states like Massachusetts will be receiving an economic boost in the form of electricity that will be one-third the price. This will drive economic development and employment away from Long Island towards other states. If a manufacture is looking for a location to build a new plant, for example, it will likely look to Massachusetts where the price of electricity is less than a third the price that it is on Long Island.

(b) Lower Income Groups

The Applicant has failed to comply with 30 CFR 585.627(a)(7) with specific regard to its potential negative impact upon lower income groups.

Any increase in electricity prices will fall disproportionately on those who can least afford it. A family on a low income will have to heat or cool their home in the same way a family on a higher income will have to do, so any increase in electricity prices will represent a larger proportion of a low-income family's income than it will a higher-income family. This will cause families on lower incomes who are already hurting to suffer further more economic hardship than families on higher incomes.

(c) Commercial Fishing

The Applicant has failed to comply with 30 CFR 585.627(a)(7) with specific regard to its potential negative impact upon the commercial fishing industry, largely based in Montauk, and the effect it will have on the local economy.

6. Whether the Project will be Safe – 30 CFR 585.621(b)

The Applicant has failed to show how it will maintain and guarantee access for emergency services during the construction phase of its project. The Applicant has failed to show what procedures it has in place to guarantee the safety of “anyone on or near [its] facilities”¹² during construction including but not limited to residents of Wainscott who live on the right-of-way (ROW) or anyone accessing the ROW, for example, someone walking to Wainscott Beach.

Conspicuously absent are safety plans the Applicant has in place to ensure Wainscott residents’ ready access to emergency services such as ambulance, police and fire-fighting services.

The Applicant’s Construction and Operations Plan contains specifications¹³ for twenty (20)¹⁴ vaults which are similar in size to a standard 40-foot shipping container.¹⁵ (*See Appendix II.*)

Emergency services will be unable to drive without hinderance due to the construction of vaults underneath the asphalt roadways. This construction will necessitate extensive road closures throughout Wainscott.

The Town of East Hampton Police Department, for example, will have difficulties responding to emergency calls that require the police to drive south along Wainscott Northwest Road to access Montauk Highway due to the construction of four (4) vaults. (*See Appendix III.*)

The intersection of Montauk Highway and Wainscott Northwest Road, one of the busiest intersections in the Town of East Hampton and the only set of traffic lights in Wainscott, will become impassable due to the construction of vaults on Wainscott Northwest Road on either side of Montauk Highway. This will force traffic trying to access Montauk Highway onto other more dangerous intersections without traffic lights and onto other local roads. (*See Appendix IV.*)

On Beach Lane alone, the Applicant plans to install four (4) vaults underground beneath the asphalt in the middle of laneway between the beach and Wainscott Main Street. The Applicant has failed to show how it will permit emergency services to access Wainscott Beach without hinderance. On July 21, 2018, for example, emergency services were called to Wainscott Beach in response to a Wainscott resident who regrestfully drowned. With all the proposed construction activities on Beach Lane, including Horizontal Directional Drilling (HDD), it would not be possible for emergency service to respond quickly to someone in danger on Wainscott Beach. (*See Appendix V.*)

At the east end of Wainscott Main Street is the entrance to a subdivision containing approximately fifty (50) homes called the Georgica Association. The Applicant proposes to construct underground, immediately outside the entrance to the Georgica Association, three (3) vaults in the middle of Wainscott Main Street and Sayre’s Path. Construction will necessitate road closures and

¹² 30 CFR 585.627(d) – Safety Management System (SMS)

¹³ BOEM Construction and Operations Plan (COP) Vol. II, Appendix G3 (on page 4) & Appendix G5 (on page 9).

¹⁴ BOEM Construction and Operations Plan (COP) Vol. II, Appendix G4.

¹⁵ The transition vault is 35’ by 8’ by 10’ deep with a volume of 2,800 square feet which is larger in volume than a standard 40-foot shipping container which has a volume of 2,560 square feet (40’ by 8’ by 8’). The nineteen (19) splicing vaults are 26’ 4” by 9’ 4” by 10’ deep with a volume of 2,458 square feet.

block sole access to/from the Georgica Association and its fifty (50) homes. The Applicant has failed to show how emergency services will have access unhindered by construction. In case of fire, for example, the fire department, fire-trucks and equipment could not access the Georgica Association without hinderance to put out the blaze or for an ambulance to rush someone to hospital. *(See Appendix VI.)*

7. Agency and Stakeholder Outreach – 30 CFR 585.626(b)(17)

The Applicant has willfully failed to comply with 30 CFR 585.626(b)(17) which requires it to “consult about potential impacts of [its] proposed activities ... with appropriate federal and state agencies, tribal governments, and the public...”

The Applicant has actively tried to conceal the true nature and extent of its impact on the local community of Wainscott and the broader community of Long Island.

At no time has the Applicant disclosed to the public the existence of nineteen (19) splicing vaults which it plans to construct underground on the local roadways throughout Wainscott.

The Applicant has maintained throughout its public “outreach” campaign that it intends to build a 90-megawatt wind farm. This is not true.

The Applicant failed to disclose to the public its revised Construction and Operations Plan whereby it now seeks permission to increase the capacity of the –

- a) Export cable from 138 to 230 kilovolts¹⁶;
- b) Wind turbines from 6 to 12 megawatts¹⁷;
- c) Overall potential wind farm output from 90 to 130/180 megawatts; or
- d) Onshore duct banks from accommodating one (three-phase) submarine cable landing at Wainscott Beach to accommodating two (three-phase) submarine cables landing at Wainscott Beach¹⁸.

In its submission to BOEM, Deepwater Wind states that “the final cable size will be determined based on the final wind turbine selected.”¹⁹ This claim is at best dubious. It is irrelevant whether Deepwater Wind selects wind turbines of 6 MW or 12 MW because in both cases the cable size required to deliver the maximum generated electricity is the same – 138 kV.

¹⁶ BOEM COP Vol. 1, Paragraph 3.2.2 South Fork Export Facilities (at page 3-35)

¹⁷ BOEM COP Vol. 1, Table 3.0-1 Project Components and Envelope (at page 3-2)

¹⁸ BOEM COP Vol. 1, Paragraph 3.2.2.3 South Fork Export Cable - Onshore (at page 3-42)

¹⁹ BOEM COP Vol. 1, Paragraph 3.2.2 South Fork Export Cable Facilities (at page 3-35)

Taken all together, the Applicant now seeks permission to install infrastructure that can accommodate bringing electricity ashore at Wainscott Beach from a wind farm with a capacity of 600-800 megawatts. This increased capacity represents a seven to nine-fold increase from what the public has been told would be a 90-megawatt wind farm.

The local Wainscott community and the general public have not been “consulted ... about potential impacts of [the Applicant’s] proposed activities” pursuant to 30 CFR 585.626(b)(17). The local Wainscott community are only now becoming more aware of the true nature and extent of the Applicant’s plans after reading the Applicant’s Construction and Operations Plan which was filed only last month.

There is still much information that the Applicant is concealing from the local Wainscott Community and the public in general. The Applicant has refused, for example, to disclose the price of its electricity to the residents of Long Island, falsely claiming that the price is a “trade secret”. The Applicant revealed the price of its electricity to the ratepayers of Rhode Island and Maryland²⁰, so there is no reason for it to hide the price from the ratepayers of Long Island. Needless-to-say, it is in the public interest for the Applicant to reveal its price to those who have to pay the price. In this example, as in the case of many other examples, the public has been denied pertinent information “about potential impacts of [the Applicant’s] proposed activities”.²¹

8. Financial Assurance – 30 CFR 585.626(b)(19)

The Applicant has failed to comply with 30 CFR 585.626 (b)(19) and has provided false information with regards to its owners. The Applicant is not owned by the D.E. Shaw Group and the Applicant has not provided “statements attesting to the fact that the activities and facilities as proposed in the COP are or will be covered by an appropriate bond or other approved security, as required by 30 CFR 585.515 and 30 CFR 585.516.”

Should you have any questions, please do not hesitate to contact me via email (Si@FinkKinsella.com) or at the address (above).

Sincerely yours,



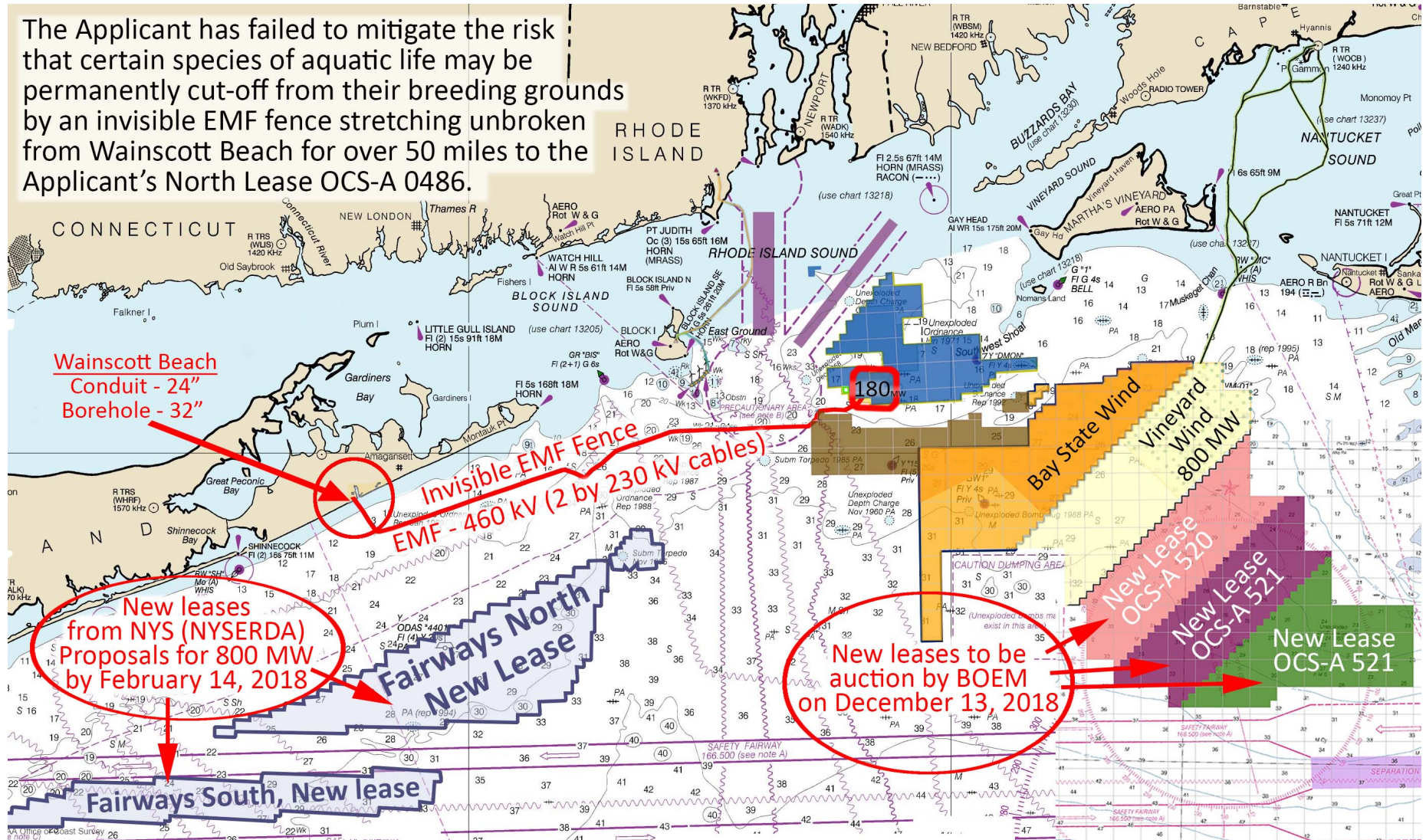
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²⁰ Rhode Island 24.4 ¢/kWh, Maryland 13.2 ¢/kWh

²¹ 30 CFR 585.626(b)(17)

Appendix I

The Applicant has failed to mitigate the risk that certain species of aquatic life may be permanently cut-off from their breeding grounds by an invisible EMF fence stretching unbroken from Wainscott Beach for over 50 miles to the Applicant's North Lease OCS-A 0486.

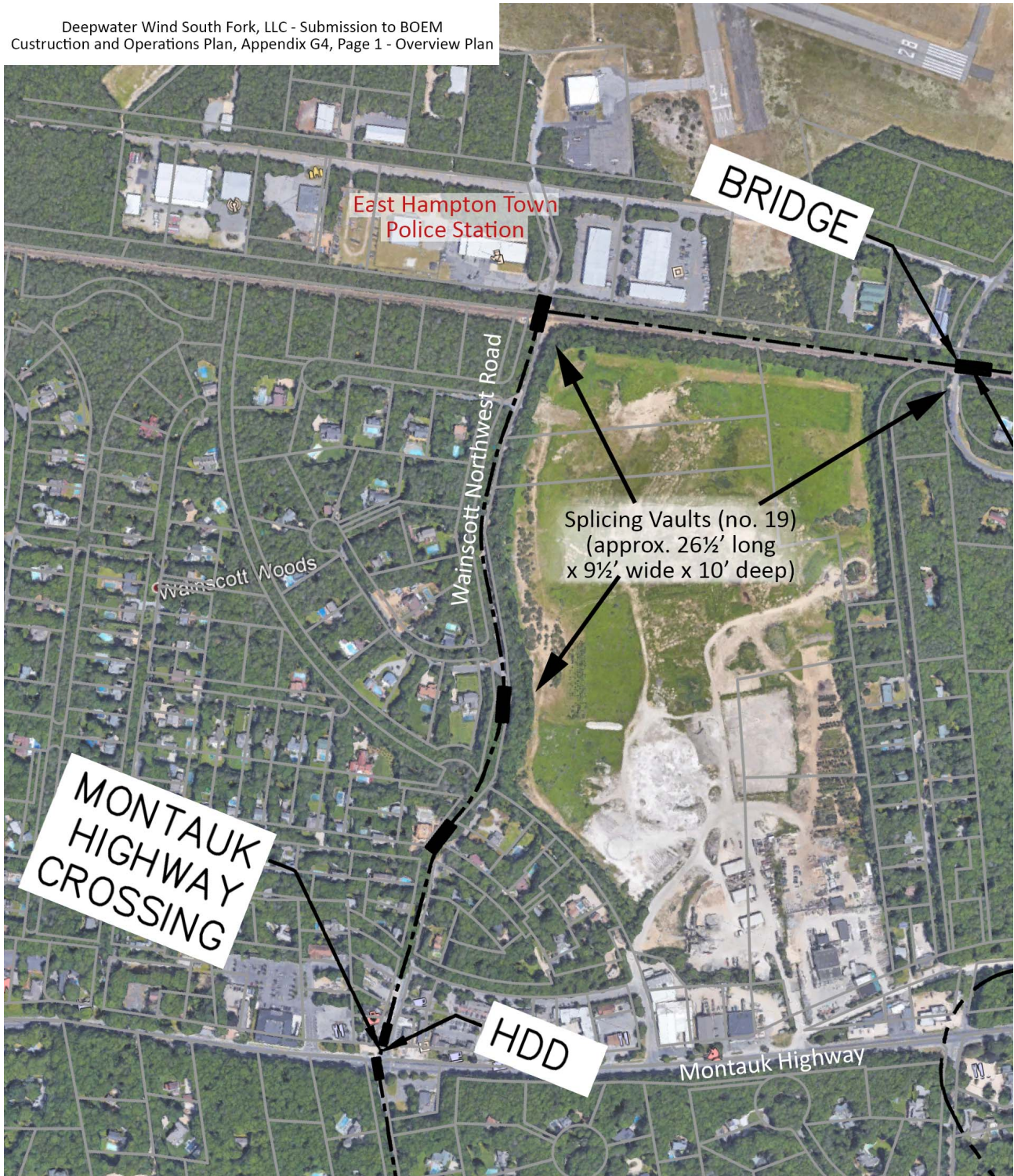




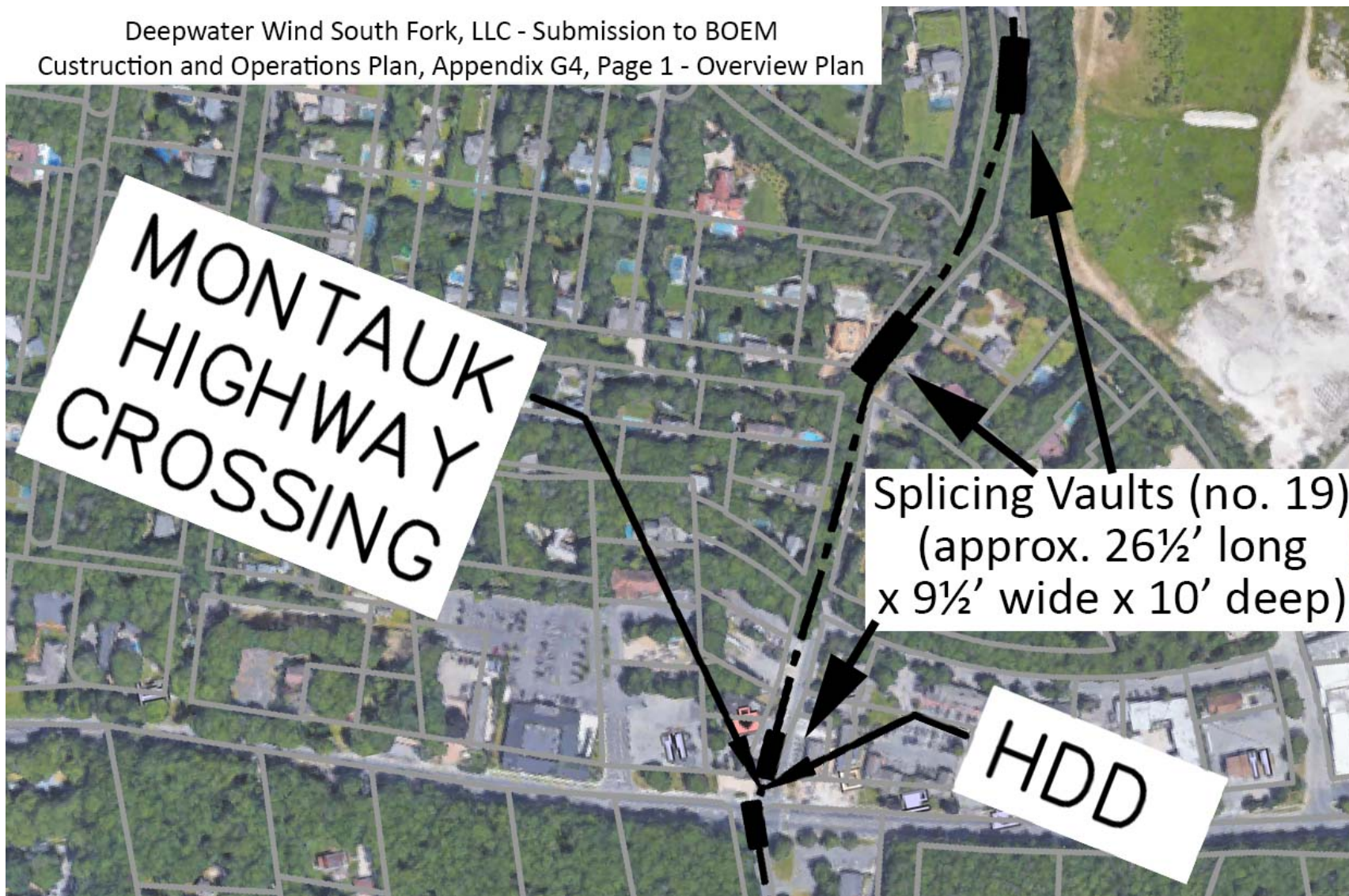
Deepwater Wind South Fork, LLC - Submission to BOEM
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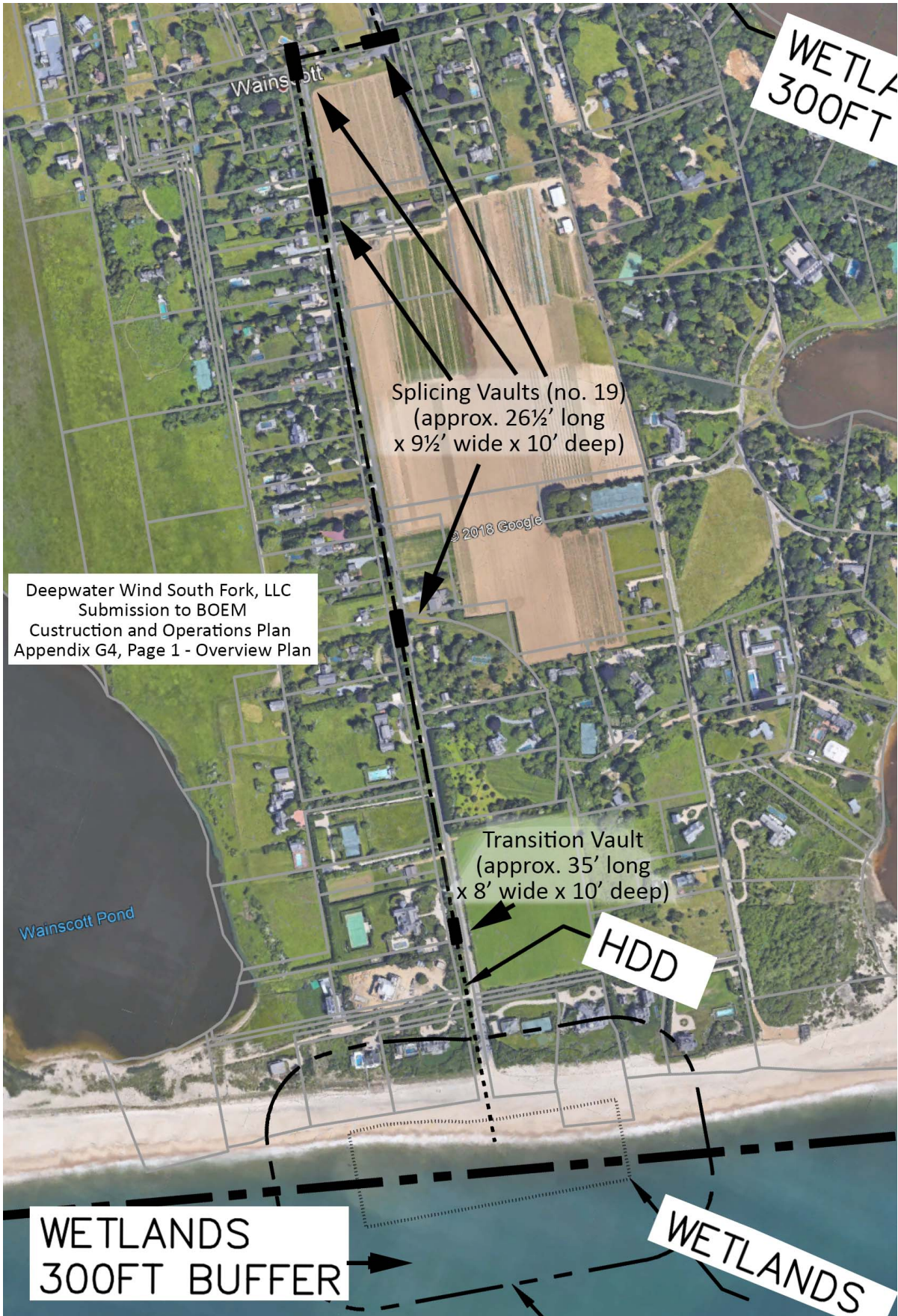
Appendix III

Deepwater Wind South Fork, LLC - Submission to BOEM
Custruction and Operations Plan, Appendix G4, Page 1 - Overview Plan



Deepwater Wind South Fork, LLC - Submission to BOEM
Custruction and Operations Plan, Appendix G4, Page 1 - Overview Plan





Appendix VI

